



**RHODE ISLAND**  
**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

Office of Compliance and Inspection 235 Promenade Street, Providence, RI 02908-5767  
Telephone 401-222-1360 Fax 401-222-3811 TDD 401-222-4462

July 9, 2010

Thomas E. Hefner  
Town Solicitor  
Town of Cumberland  
45 Broad Street  
Cumberland, RI 02864

Superfund Records Center  
SITE: Boulter  
BREAK: 13.1  
OTHER:                     

In re: JF Realty LLC (Advanced Auto Recycling)  
290 Curran Road, Cumberland, RI  
DEM File No.: WP04-186, AAD No. 10-003/WRE



SEMS DocID 589371

Dear Mr. Hefner:

The Department of Environmental Management ("DEM") received correspondence from your office concerning environmental compliance at the above referenced site that included a request to meet with DEM and several other agencies.

Since September 2007, DEM has received numerous repeated complaints from an adjacent land owner, Mr. Louis Paolino, regarding alleged wetland, solid waste, oil pollution and water pollution violations dating back to the 1980's. The most recent complaint was submitted on June 25, 2010. DEM thoroughly investigated each complaint and determined all but one to be unfounded. DEM did document a water pollution violation that involved the discharge of turbid stormwater runoff from the property to Curran Brook. DEM attempted to resolve the matter informally; however the action taken by the responsible party did not timely correct the violation. As a result, DEM issued a Notice of Violation ("NOV") on March 2, 2010 that included an order to correct the violation and an administrative penalty for non-compliance. JF Realty LLC, the respondent, has requested an administrative hearing with the DEM Administrative Adjudication Division to contest the NOV. A copy of the NOV is attached for your information.

As previously stated, other than the aforementioned water pollution violation subject to the NOV, all of the complaints submitted by the adjacent land owner, including the one submitted on June 25, 2010 were determined to be unfounded. Please refer to three DEM letters (copies attached) dated October 24, 2007, April 16, 2008, and November 24, 2009 addressed to the complainant regarding the results of DEM's investigation.

You may also review the Advanced Auto Recycling file here at DEM if you want additional information. An appointment for a file review can be arranged by calling Ms. Maureen Casey at (401) 222-4700 extension 7307. If you have any questions or need additional information,

Thomas E. Hefner  
Page Two (2)

please contact me by telephone at (401) 222-1360 extension 7119 or by e-mail at [patrick.hogan@dem.ri.gov](mailto:patrick.hogan@dem.ri.gov).

Sincerely,



Patrick J. Hogan, P.E.  
Principal Sanitary Engineer  
Office of Compliance & Inspection

Enclosures

cc: Ronald Gagnon, DEM/ Office of Customer & Technical Assistance  
Joseph Antonio, DEM/ Office of Customer & Technical Assistance  
Russell Chateaufneuf, DEM/ Office of Water Resources  
Martin Wencek, DEM/ Office of Water Resources  
David Chopy, DEM/ Office of Compliance & Inspection  
Marisa Desautel, DEM/ Office of Legal Services  
James L. DeCelles, Pawtucket Water Supply Board  
✓ David Newton, U.S. Environmental Protection Agency  
Rodman Palmer, North Attleboro Building Official



RHODE ISLAND

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

October 24, 2007

Louis P. Paolino  
19 Heritage Drive  
Lincoln, RI 02865

RE: Complaint No. 2007 1413 FW (x-ref. L07-0379, WP04-186)  
Advanced Auto Recycling, Inc.  
290 Curran Road, Cumberland, RI

Dear Mr. Paolino:

The Department of Environmental Management (DEM) has investigated your complaint regarding the above referenced property submitted on September 13, 2007.

The complaint states that there is no evidence that a stream was constructed at the above referenced property in accordance with plans approved by DEM as part of an application to alter fresh water wetlands (Wetlands Application No. 6517F) submitted to DEM on August 16, 1984. On September 30, 2005, Wetlands Application No. 05-0507 was submitted to DEM for the subject property. DEM engineering review of Wetlands Application No. 05-0507 noted the presence of a well defined channel (likely manmade) with steep banks of 1' to 2' high along the border of the property at the location where the stream was to be constructed in accordance with Wetlands Application No. 6517F. Based on the aforementioned, the DEM has determined that the complaint regarding the construction of the stream is unfounded.

The complaint also states that the buffer zone that was established as part of the approval of Wetlands Permit No. 6517F was not maintained. The plans submitted as part of Wetlands Application No. 05-0507 show the existence of a building and paved areas within close proximity to the intermittent stream. DEM reviewed Wetland Application No. 05-0507 and determined that the proposed project would not significantly affect the subject wetlands and was therefore approved as an Insignificant Alteration. The determination and subsequent approval was based on, among other considerations, the existing site characteristics at the time of review which included the area subject to the buffer zone approved as part of Wetlands Application No. 6517F. As such, there is no violation relative to your complaint at the above referenced property.

If you have any questions, please contact me by telephone at (401) 222-4700 extension 7119 or by e-mail at [patrick.hogan@dem.ri.gov](mailto:patrick.hogan@dem.ri.gov).

Sincerely,

Patrick J. Hogan, P.E.  
Principal Sanitary Engineer  
Office of Compliance & Inspection

cc: David Chopy, RIDEM/ Office of Compliance & Inspection  
Hank Ellis, RIDEM/ Office of Compliance & Inspection



**RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

Louis P. Paolino  
19 Heritage Drive  
Lincoln, RI 02865

April 16, 2008

RE: Advance Auto Recycling, Inc., 290 Curran Road, Cumberland, RI  
DEM File Nos. 2007 1413FW, WP04-186, WP08-022, L08-011

Dear Mr. Paolino:

The Department of Environmental Management (DEM) has investigated your complaints regarding the above referenced property (the "Property") submitted on January 18<sup>th</sup>, January 23<sup>rd</sup>, and February 6<sup>th</sup> alleging that rock and debris had been thrown into the stream, a building had been constructed and expanded within the 100-foot riverbank wetland, turbid water was being discharged into the stream, solid waste located in the wetlands on the Property had not been removed in accordance with a Notice of Violation, and that water is being discharged onto your property without your permission or prior notice. DEM also investigated a related complaint that the operators of the auto recycling facility were mismanaging auto fluids and allowing significant amounts of liquid wastes to run off into the wetlands. Copies of the subject complaints investigated have been attached to this letter.

As part of our investigation of the aforementioned complaints, DEM performed a multi-media inspection of the Property on March 5, 2008. During the DEM inspection, turbid water originating from the storm drain system located at the Property was observed to be discharging to the stream and an area of heavy petroleum staining from the fuel dispenser was observed on the pavement and the exterior wall of the main office building. In response to the violations observed during the multi-media inspection, DEM issued a Notice of Intent to Enforce (NOI) to the owner of the Property. The NOI requires that the violations be corrected in a timely manner. A copy of the NOI has been attached to this letter.

With respect to your complaint that rock and debris had been thrown into the stream, DEM found no evidence of a violation. DEM did observe a riprap lined plunge pool that was recently constructed at the two discharge pipes associated with the stormwater drainage system at the Property. The riprap, which is a processed rock, was installed at this location both in and along the sides of the stream in accordance with plans approved by the DEM Freshwater Wetlands Program on July 13, 2007, permit no. 05-0507. The purpose of riprap is to prevent erosion of the streambed and banks.

With respect to your complaint that solid waste located in the wetlands on the Property had not been removed in accordance with a Notice of Violation, DEM found no evidence of a violation. DEM inspectors surveyed the Property on March 5, 2008 with particular attention paid to the bordering wetlands and found no solid waste in volume exceeding the regulatory limit of three cubic yards.

Mr. Louis P. Paolino  
Page Two (2)

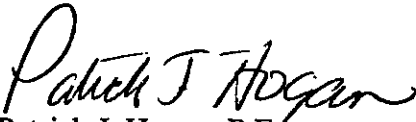
With respect to your complaint that water is being discharged onto your property without your permission or prior notice, the DEM found no evidence of a violation. The DEM permits that are applicable to the installation of the storm drain system at the Property are the Freshwater Wetlands Permit, which was determined to be an Insignificant Alteration, and the Rhode Island Multi-Sector General Permit for Stormwater Discharge Associated with Industrial Activity. Neither of these permit applications required any notification to you as an abutter. Notwithstanding this fact, DEM provided the file to you for your review and comment which resulted in the discharge point being relocated to the southwest corner of the Property at the border with the right-of-way associated with Curran Road. As such, the stormwater is not discharged onto your property.

With respect to your complaint of a building being constructed and expanded within the 100-foot riverbank wetland, DEM found no evidence of a violation. The results of the investigation of this complaint had already been addressed in a letter to you from DEM dated October 24, 2007. A copy of the letter has been attached.

Finally, with respect to the complaint that the auto recycling facility was mismanaging auto fluids and allowing significant amounts of liquid wastes to run off into the wetlands, DEM found no evidence of a violation. During the multi-media inspection conducted on March 5, 2008, DEM inquired about the vehicle dismantling and auto fluids handling processes and inspected the stream at several locations along the entire length of the property border. DEM found no evidence that auto fluids were being mismanaged by the auto recycling facility.

If you have any questions or need additional information regarding this matter please contact me by telephone at (401) 222-4700 extension 7119 or by e-mail at [patrick.hogan@dem.ri.gov](mailto:patrick.hogan@dem.ri.gov).

Sincerely,



Patrick J. Hogan, P.E.  
Principal Sanitary Engineer  
Office of Compliance & Inspection

cc w/out attach.: David Chopy, DEM/ Office of Compliance & Inspection  
Eric Beck, DEM/ Office of Water Resources  
Dean Albro, Chief, DEM/ Office of Compliance & Inspection  
Terrence Gray, DEM/ Assistant Director for Air, Waste & Compliance  
Jennifer Stout, DEM/ Office of Water Resources  
David Turin, U.S. Environmental Protection Agency

D. Chopy  
Per



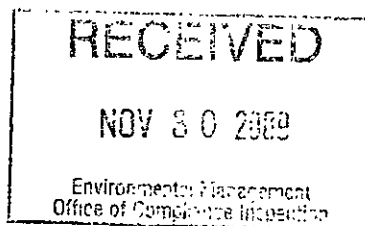
RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

November 24, 2009

Jeffery S. Perlow, Esq.  
Moretti Perlow & Bonin Law Offices  
1070 Reservoir Avenue  
Cranston, RI 02910



Re: Louis Paolino Property – Curran Road, Cumberland

Dear Mr. Perlow:

We have had an opportunity to review your letter addressed to Director W. Michael Sullivan concerning the subject individual's complaints relative to activities of his neighbor, Joseph Ferreira (Advance Auto Recycling Inc.). Mr. Paolino had previously raised these complaints with the Department and we believe we had adequately addressed them in our letters to him dated October 24, 2007 and April 16, 2008 (attached). Notwithstanding, we offer the following information to you in response to your letter.

Relocation of stream onto Lot 362 (Paolino Property)

As part of an overall development and settlement action regarding freshwater wetlands violations on Lot 363 (Ferreira Property) that existed in 1985, DEM issued a permit to alter freshwater wetlands under Permit Number 6517 on January 10, 1986. That plan showed the relocation of 600+ feet of drainage ditch or area subject to storm flowage approximately 100 feet westerly to an area on Lot 363 along the property boundary between Lots 363 and 362. According to the approved plan, Mr. Paolino did not own Lot 362 at that time. The record owners of Lot 362 (Philip and Mark Diamond) were provided notice of the proposal and no comment was received. The ditch was subsequently relocated and was in place as of the date DEM released the Notice of Violation (NOV) on the Lot 363 – May 10, 1989. The survey plan you provided that was prepared for Mr. Paolino by Robert Perruzzi, PLS, dated January 7, 2009 now shows approximately 300+ feet of the ditch being on Lot 362. We believe this matter is a civil issue between the lot owners. Should as a result of resolution of any civil proceedings, further relocation of the ditch (now classified as a stream/intermittent stream) be proposed, a permit under the Freshwater Wetlands Regulations would be required.

Encroachment into 20-foot buffer to drainage ditch

The subject plan under Permit Number 6517 depicted a 20-foot buffer to be "maintained along the easterly side" of the relocated drainage ditch "to protect against oil spills". DEM believes that such a buffer was originally established prior to release of the NOV. While you question whether the buffer was established initially, you presented no evidence to the show that it did not initially exist. You also claim that a portion of this buffer is now occupied by a building. DEM has reviewed this matter and determined that there is no violation of the original permit as the threat from oil spill into this buffer has been substantially removed.

Allegation of stormwater discharge from Lot 363 onto Lot 362

As indicated in our April 16, 2008 letter to Mr. Paolino, the discharge location shown on the initial



Jeffery S. Perlow, Esq.  
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stormwater control plan for Lot 363 under Permit Number 05-0507 was questioned by Mr. Paolino prior to approval by DEM. As a result, the plan was changed so that stormwater would discharge 90 degrees southerly, directly to the town-owned right-of-way along Curran Road. You and Mr. Synder of Environmental Resource Associates have interpreted the Perruzzi survey plan as evidence that the stormwater from Lot 363 is discharged into Lot 362. While you have not produced a plan that shows that the constructed stormwater facilities under Permit Number 05-0507 are discharging stormwater into Lot 362, we agree that the point at which the property lines intersect with the Curran Road right-of-way as shown on the two drawings, are different, and that the point of entry of the stream into the 24-inch diameter culvert under Curran Road may in fact be on Lot 362. However, we would note that the original location of the drainage ditch on Lot 363 as shown on the 1986 approved plan discharged to this general area and ran parallel to Curran Road to the point of the entry into the culvert. Hence, the new drainage scheme near the road appears to be reverting, at least partially, to the original channel location. We would also note that the town directs street drainage from Curran Road through an 8-inch diameter culvert to the same area that Lot 363 discharges its stormwater. All culverts are being maintained by the Town of Cumberland to our knowledge. Importantly, while there appears to be a question as to accuracy of the property lines as shown on the 05-0507 permit, the area affected is limited to a small area where drainage collects prior to entry into the road culvert and has evidently served a drainage purpose for many years if not decades. As with the first item, we believe this matter is a civil issue between the lot owners.

Complaint of continuing water pollution from Lot 363

We have received complaints concerning the alleged failure of the stormwater facilities on Lot 363 to properly treat stormwater runoff from the property. The last inspection performed did not show a failure of the treatment system. DEM will investigate this matter, conduct additional inspections, and take appropriate action to ensure any violation of water quality requirements is addressed.

Should you have any questions, please feel free to contact me at 401-222-4700 Ext. 7700.

Sincerely,



Russell J. Chateaudune  
Chief  
Groundwater & Wetlands Protection  
Office of Water Resources

Attachments (two correspondences)

cc: Eugene Jeffers, Cumberland DPW Director  
W. Michael Sullivan, Director, RIDEM  
Mary Kay, Acting Executive Counsel, RIDEM  
Dave Chopy, RIDEM  
Eric Beck, RIDEM

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: JF Realty LLC and  
Joseph Ferreira**

**FILE NO.: WP04-186**

**NOTICE OF VIOLATION**

**A. Introduction**

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, ("R.I. Gen. Laws") you are hereby notified that the Director of the Department of Environmental Management (the "Director" of "DEM") has reasonable grounds to believe that the above-named parties ("Respondents") have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

**B. Facts**

- (1) The property is located at 290 Curran Road, Cumberland, Rhode Island (the "Property").
- (2) The Property is owned by JF Realty LLC.
- (3) The Property includes an automobile salvage yard (the "Facility") and a storm water conveyance system that discharges storm water from the Facility through two outfall pipes (the "outfall pipes") to Curran Brook.
- (4) JF Realty LLC leases the Property to LKQ Advanced Auto Recycling, Inc. The Rhode Island Secretary of State's records list Joseph Ferreira as the President of the corporation. LKQ Advanced Auto Recycling, Inc. was dissolved as a corporation on September 21, 2006.
- (5) DEM issued a Notice of Intent to Enforce ("NIE") to the Joseph I. Ferreira Trust on April 9, 2008 advising that the stormwater discharge from the Property was causing a water quality violation.
- (6) On November 20, 2009, DEM inspected the Property during a rain storm. The inspection revealed that pollutants (in the form of sediment) were discharged from the Property to Curran Brook as evidenced by:
  - (a) photographs of turbid water discharging from the outfall pipes into Curran Brook; and
  - (b) results of water samples collected during the inspection and analyzed for turbidity. The sample locations and results are shown in the following table:



Sample Location	Nephelometric Turbidity Units (NTU)
Curran Brook (upstream of outfall pipes)	1.6
Small diameter outfall pipe	64.0
Large diameter outfall pipe	44.6
Curran Brook (at stream merge)	13.6
Curran Brook (downstream of outfall pipes)	6.8

- (7) The water quality criteria for turbidity for Curran Brook shall not exceed 5 NTUs over background.
- (8) The discharge from the outfall pipes on November 20, 2009 caused a violation of the water quality criteria for turbidity in Curran Brook.
- (9) The Respondents did not receive approval from DEM to discharge storm water in concentrations that violate the water quality criteria.
- (10) As of the date of this Notice of Violation ("NOV"), the Respondents have not taken adequate steps to treat the storm water so that stormwater discharges from the outfall pipes meet the water quality criteria for Curran Brook.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **The Rhode Island Water Pollution Act Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with applicable regulations.
- (2) **DEM Water Quality Regulations, Rule 9(A)** – prohibiting the discharge of pollutants into any waters of the State or any activity alone or in combination which the Director determines will likely result in the violation of any State water quality criterion.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Immediately** retain the services of a qualified environmental professional to evaluate the Property, the stormwater drainage system, and Facility operations to determine the cause of the water quality criteria violation and develop a plan prepared by a registered professional engineer to correct the violation (the "Corrective Action Plan").
- (2) **Within sixty (60) days of receipt of this NOV**, submit the Corrective Action Plan to DEM for review and approval. Upon review, the DEM shall provide written

notification to the Respondents either granting formal approval or stating the deficiencies therein. Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondents shall submit to the DEM any additional information necessary to correct the deficiencies.

- (3) Within thirty (30) days of DEM approval of the Corrective Action Plan (unless otherwise expressly authorized by the Director in writing to commence at a later time), commence work on the project in accordance with the method approved by the Director and complete such work within ninety (90) days of said approval or other date specified by the Director.

E. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED against each named respondent:

**Two Thousand Six Hundred Seventy Dollars (\$2,670.00)**

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty (20) days of your receipt of this NOV. Payment shall be in the form of a certified check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against respondents in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with this NOV.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E above. Requests for hearing MUST:
  - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);

- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk  
DEM - Administrative Adjudication Division  
235 Promenade Street, 3<sup>RD</sup> Floor  
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Marisa Desautel, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Marisa Desautel at the DEM Office of Legal Services at (401) 222-6607 extension 2408. All other inquiries should be directed to Patrick Hogan of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7119.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR



David E. Chopy, Chief  
DEM Office of Compliance and Inspection

Date: March 2, 2010

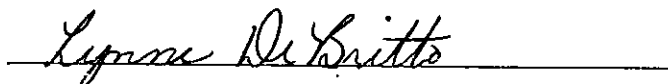
CERTIFICATION

I hereby certify that on the 2nd day of March 2010  
the within Notice of Violation was forwarded to:

JF Realty LLC  
C/o Joseph Raheb, Esq.  
Registered Agent for Service  
650 Washington Highway  
Lincoln, RI 02865

Joseph Ferreira  
11 Gladding Drive  
Cumberland, RI 02864

by Certified Mail.





## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution

File No.: WP04-186

Respondents: JF Realty LLC and Joseph Ferreira

GRAVITY OF VIOLATION SEE ATTACHED PENALTY MATRIX WORKSHEETS!					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C(1) & C(2) Discharge of pollutants to Curran Brook - November 20, 2009	Type 1 (\$6,250 Max. Penalty)*	Minor	\$2,500	1	\$2,500
SUB-TOTAL					\$2,500.00

\*Maximum Penalties represent the maximum penalty amounts per day, per violation.

COST RECOVERY ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS) FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED		
DESCRIPTION OF COST	CALCULATION OF ACTUAL COST INCURRED	AMOUNT
Laboratory analyses of water samples taken on November 20, 2009	State Contracted Laboratory Invoice No. 0911254	
	Five samples for turbidity @ \$15 per sample	\$75.00
	One sample for volatile organic compounds @ \$95	\$95.00
SUB-TOTAL		\$170.00

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$2,670.00**

## PENALTY MATRIX WORKSHEET

CITATION: Discharge of pollutants to Curran Brook – November 20, 2009

VIOLATION NO.: C(1) & C(2)

### TYPE

#### X TYPE I

DIRECTLY related to protecting health, safety, welfare or environment.

#### TYPE II

INDIRECTLY related to protecting health, safety, welfare or environment.

#### TYPE III

INCIDENTAL to protecting health, safety, welfare or environment.

### DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED

#### FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents discharged pollutants (in the form of sediment) to a stream tributary to a public drinking water supply reservoir that resulted in a violation of the water quality criteria for turbidity within the stream.
- (B) **Environmental conditions:** Pollutant discharge to a class AA surface water body (Curran Brook). Among other uses, class AA water bodies are designated as a source of public water drinking supply or as tributary waters within a public drinking water supply watershed. These water bodies are also designated for primary and secondary recreational activities and for fish and wildlife habitat. These waters are to have excellent aesthetic value. The water quality criteria for turbidity for Class AA waters is no more than 5 NTUs over background.
- (C) **Amount of the pollutant:** Unknown - The analytical results showed that the discharge resulted in a violation of the water quality criteria for turbidity within Curran Brook. The upstream sample was 1.6 NTU and the downstream sample was 6.8 NTU.
- (D) **Toxicity or nature of the pollutant:** Turbid water affects the physical and biological characteristics of a waterbody which negatively impacts fish and wildlife.
- (E) **Duration of the violation:** Unknown – DEM is assessing a penalty for the violation observed on November 20, 2009.
- (F) **Areal extent of the violation:** Not relevant.

(continued)

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent, and/or mitigate the noncompliance:** DEM issued a Notice of Intent to Enforce (NIE) to the Joseph I. Ferreira Trust on April 9, 2008 requiring corrective actions. In response to the NIE, some actions to mitigate the non compliance were taken. However, the actions taken to date have failed to correct the non compliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not relevant.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Not relevant.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<b>MAJOR</b>	<b>MODERATE</b>	<b><u>  X  </u> MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		<b>TYPE I</b>	<b>TYPE II</b>	<b>TYPE III</b>
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250 <b>\$2,500</b>	\$1,250 to \$2,500	\$250 to \$1,250

**Patrick Hogan**

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**From:** Bruce Ahern  
**Sent:** Thursday, July 08, 2010 4:12 PM  
**To:** Patrick Hogan  
**Cc:** David Chopy  
**Subject:** Water Pollution File No. 05-02 (R.I.RRC)  
**Attachments:** 05-02.restoration plan review sheet (7-8-10).doc; 05-02.Site Plan Requirements (7-8-10).doc

Pat:

Sorry for the delay in getting this information to you (I know that I have passed my "deadline" date). Attached are electronic copies of my "Review Comments" sheet and suggest "Site Plan Requirements" for the proposed project. I have placed hard copies of these materials in the in-box at your desk. My comments speak for themselves, but it appears that the proposal is insufficient and the information provided is inadequate. Perhaps we need to meet with R.I.RRC representatives???

- BSA

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